

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROGELIO MAY RUIZ, F59761,

Petitioner,

v.

JEFF LYNCH, Warden,

Respondent.

Case No. [23-cv-04777-CRB](#) (PR)

**ORDER DISMISSING PETITION FOR
A WRIT OF HABEAS CORPUS AS
SECOND OR SUCCESSIVE PETITION**

(ECF No. 3)

Petitioner, a state prisoner currently incarcerated at California State Prison, Sacramento, has filed a pro se second or successive petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging his 2007 conviction and sentence from Santa Clara County Superior Court. His first federal petition was dismissed as untimely on February 28, 2019. See Ruiz v. Baughman, No. 17-cv-00338-CRB (N.D. Cal. Feb. 28, 2019) (order granting motion to dismiss petition as untimely).

A second or successive petition may not be filed in this court unless petitioner first obtains from the United States Court of Appeals for the Ninth Circuit an order authorizing this court to consider the petition. See 28 U.S.C. § 2244(b)(3)(A). Section 2244(b) applies here because the dismissal of petitioner's first federal petition as barred by the statute of limitation constitutes a decision on the merits. See McNabb v. Yates, 576 F.3d 1028, 1029 (9th Cir. 2009). But petitioner has not obtained the requisite order from the Ninth Circuit. The instant petition accordingly is **DISMISSED** without prejudice to refiling if petitioner obtains the requisite order.

But based solely on petitioner's affidavit of poverty, his application to proceed in forma pauperis (IFP) under 28 U.S.C. § 1915 (ECF No. 3) is **GRANTED**.

The clerk is directed to close the case and terminate all pending motions as moot.

IT IS SO ORDERED.

Dated: November 9, 2023



CHARLES R. BREYER
United States District Judge